

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 05-14

November 29, 2004

To: All Regional Directors, Officers-in-Charge,
and Resident Officers

From: Richard A. Siegel, Associate General Counsel

Subject: Regional Office Procedures for Handling Pending Section 8(b)(4)(ii)(B)
Charges Involving Union "Bannering" of Neutral Persons

In Memorandum OM 02-104, dated September 20, 2002, Regional Offices were given instructions concerning how to handle Section 8(b)(4)(ii)(B) charges that allege bannering within the parameters of Carpenters Local 1506 (AGC San Diego Chapter, Inc.), Case 21-CC-3307, Significant Appeals Minute dated August 22, 2002.

Since that time Regional Offices have litigated bannering cases both before the Board and the U.S. district courts under Section 10(l) of the Act. As a result, there are now pending before the Board for final adjudication or before Administrative Law Judges several administrative cases that place in issue the General Counsel's theories of violation under a variety of fact patterns.¹ We conclude that the initiation of new administrative complaints is no longer necessary to place the legal issues involved before the Board. This approach will conserve the limited resources of the Agency and prevent possibly unwarranted litigation expenses of the concerned parties.

The Regions should investigate all pending and future bannering charges to evaluate them under the General Counsel's current theories of violation. If the charge lacks merit, it should be dismissed, absent withdrawal. If the charge reveals arguable merit, the Region should consult with the Injunction Litigation Branch as to whether, in light of the above considerations, it should hold the charge in abeyance until the Board decides the lead cases.²

¹ See, for example, Carpenters Local 1827 (United Parcel Service), Cases 28-CC-933, et al., JD(SF)-30-03; Southwest Regional Council of Carpenters (Carignan Construction Co.), Cases 31-CC-2113, et al., JD(SF)-14-04; Southwest Regional Council of Carpenters (Held Properties, Inc.), Cases 31-CC-2115, et al., JD(SF)-24-04; Carpenters Local 1506 (AGC San Diego Chapter, Inc.), Cases 28-CC-946, et al. (before Board on stipulated record); Carpenters Local 1506 (Eliason & Knuth), Cases 28-CC-955, et al. (same).

² Regions may also submit cases to the Division of Advice on the merits of the charge.

If you have any questions regarding this memorandum, please contact the Division of Advice, Injunction Litigation Branch.

/s/
R.A.S.

cc: NLRBU
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